

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
Electri City, Inc. d/b/a/ KEMS Kewalo)	FCC File No. 0001744635
)	
For Renewal of Coastal Group Radio Service)	
License for Station WHW713, Honolulu, Hawaii)	

ORDER

Adopted: September 3, 2004

Released: September 8, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On June 7, 2004, Electri City, Inc, d/b/a KEMS Kewalo (Electri City) sent a letter to the Commission's licensing facility in Gettysburg, Pennsylvania, requesting reconsideration of an action¹ by the Wireless Telecommunications Bureau (Bureau) dismissing its renewal application for Station WHW713, Honolulu, Hawaii.² For the reasons discussed below, we dismiss Electri City's petition.

2. *Background.* On December 29, 2003, the Commission sent Electri City a license renewal reminder letter that informed Electri City that its license to operate Station WHW713 would expire on March 24, 2004.³ Electri City filed a license renewal application to the Commission on March 30, 2004.⁴ The Commission returned Electri City's renewal application without action on April 6, 2004.⁵ The Commission staff subsequently noted additional errors in the application and communicated those corrections needed to Electri City on April 19, 2004.⁶ Electri City subsequently corrected and resubmitted the application and included a check payment in lieu of a credit card payment on April 26, 2004.⁷ According to Electri City's bank records, the Commission deposited the check on May 20, 2004. Electri City received the Dismissal Letter on May 26, 2004.⁸

¹ FCC Form 699, Notice of Dismissal (dated May 21, 2004) (Dismissal Letter).

² Letter from Hector H. Venegas, V.P. Administration, Electri City, Inc. d/b/a KEMS Kewalo, to Wireless Telecommunications Bureau (dated May 31, 2004) (Petition). Station WHW713 was authorized to operate at one fixed location in Honolulu County, Honolulu, Hawaii (coordinates 21-18-46.6 N, 157-52-22.1 W).

³ See FCC Form 695, Renewal Reminder Notice, Reference No. 2449014 (Dec. 29, 2003).

⁴ Petition at 1. FCC File No. 0001744635.

⁵ *Id.* The renewal application was returned because (1) Items 21 (Applicant FRN) and 22 (Applicant TIN) on FCC Form 159 were not complete, and (2) the application and remittance were not sent to the proper mailing address in Pittsburgh, pursuant to FCC Form 1070. *Id.* at Attachment, FCC Unprocessable Request Return Form.

⁶ *Id.* The additional corrections that were needed were as follows: (1) the payment type code for the radio service requested was missing, and (2) Box 2 of FCC Form 605 and FCC Form 159 were not complete. *Id.* Attachment, FCC Financial Operations Form 250-A.

⁷ See Petition at 1.

⁸ *Id.*

3. *Discussion. Petition for reconsideration.* We dismiss Electri City's reconsideration petition because it was not filed at the correct location. Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.⁹ The Commission maintains different offices for different purposes, and persons filing documents with the Commission must take care to ensure that their documents are filed at the correct location specified in the Commission's Rules.¹⁰ Applications and other filings not submitted in accordance with the correct addresses or locations will be returned to the filer without processing.¹¹ A document is filed with the Commission upon its receipt at the location designated by the Commission.¹² Here, the plain language of the Commission's Rules states that a petition for reconsideration submitted to the Commission's Gettysburg, Pennsylvania, office is not properly filed.¹³ Moreover, we note that Electri City did not request a waiver to file the Petition at a location other than the Office of the Secretary.¹⁴ Consequently, absent a waiver, we conclude that Electri City's petition should be dismissed as improperly filed.¹⁵

4. *Ordering Clauses.* Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Electri City, Inc., d/b/a KEMS Kewalo, on June 7, 2004, IS DISMISSED.

⁹ 47 C.F.R. § 1.106(i).

¹⁰ 47 C.F.R. § 0.401.

¹¹ *Id.*

¹² 47 C.F.R. § 1.7; First Auction of Interactive Video and Data Service (IVDS) Licenses, Request for Waiver of Applications Deadline, *Memorandum Opinion and Order*, 11 FCC Rcd. 1134, 1135 (1996); Complaints Regarding Cable Programming Services Prices, *Amended Order on Reconsideration*, 10 FCC Rcd 12778, 12780 n.14 (CSB 1995).

¹³ See, e.g., Memorandum of Agreement between the Federal Communications Commission and Elkins Institute Inc., *Order on Reconsideration*, 14 FCC Rcd 5080 (WTB 1999) (determining that a facsimile copy to a division office neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office); Columbia Millimeter Communications, LP, *Order on Reconsideration*, 14 FCC Rcd 2782 (WTB PSPWD 1999) (finding that a petition for reconsideration sent to the Commission's lock box at Mellon bank neither complied with the Commission's Rules nor ameliorated the late filing with the Secretary's office), *aff'd. Order on Reconsideration*, 15 FCC Rcd 10251 (WTB PSPWD 2000). See also Petition for Reconsideration Filing Requirements, *Public Notice*, 15 FCC Rcd 19473 (WTB 2000).

¹⁴ See, e.g., *Spartan Concrete*, 15 FCC Rcd 24703 (WTB-PSPWD 2000) (dismissing as improperly filed a petition for reconsideration not filed with the Office of the Secretary, and not accompanied by a request to waive that filing requirement).

¹⁵ Electri City does not argue, and we do not find, either a public interest or administrative convenience rationale to waive the Commission's filing requirements on our own motion. See *Goosetown Enterprises, Inc.*, 16 FCC Rcd 12792 (2001) (Commission has discretion, on its own motion, to accept an improperly re-filed application for administrative convenience reasons pursuant to section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3). We note that if we considered the Petition on the merits, we would deny the Petition. Renewal applications that are properly filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules. See Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476 at 11485 ¶ 22 (1999) (*ULS Reconsideration MO&O*). But Electri City's application, when filed, was not "otherwise sufficient" under our Rules. Moreover, Electri City does not address the Commission's policy regarding late-filed renewal applications. Nor does it offer any explanation by way of waiver for why it failed to file any renewal application until after the license expired.

5. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm, Chief
Public Safety and Critical Infrastructure Division,
Wireless Telecommunications Bureau